Supreme Court, U.S.
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No. 92-1432

In The

Supreme Court of the United States

October Term, 1992

OWENS-CORNING FIBERGLAS CORPORATION,

Petitioner,

v.

OPAL JOHNSON, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR FOR THE ESTATE OF WILLIAM JOHNSON, DECEASED,

Respondent.

Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Fourth District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

As is more fully demonstrated in her Statement of the Case and Argument, Respondent denies that Petitioner "presented" the "question" which appears in its brief, because Petitioner did not adequately raise that question in the state court.

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STATEMENT OF FACTS

Owens-Corning Fiberglas Corporation (OCF) purchased the asbestos plant located at 1111 West Perry Street, Bloomington, Illinois, effective April 15, 1970. Bill Johnson was employed at the plant by OCF from that date into 1977.

Within the first two weeks after OCF purchased the plant, Dr. Jon Konzen, OCF's Medical Director, reviewed the potential health hazards of the plant with the plant manager, J. J. Young, and began reviewing the health status of the production employees. [R.C1930.] By July 8, 1970, Konzen had arranged for an industrial hygiene survey of the manufacturing operations. [R.C1931-32.]

By July 14, 1970, Konzen had received partial results of the survey and stated in an internal memorandum: "This study demonstrates immediate need for in-plant environmental control of asbestos so our employees do not continue to be severely exposed to airborne asbestos fiber. Such ventilation as is currently operating at the plant is totally inadequate. It is suggested, to limit both the occupational health hazards and the legal liability, steps be undertaken. . . . " [R.C2023.]

On September 2, 1970, Konzen reviewed the medical requirements of the operation with the new plant manager. [R.C1937.] By November 2, 1970, Konzen had issued a new medical program for the plant. [R.C1938-39.] On November 20, 1970, Konzen inspected the plant and conferred with plant physician, Dr. George McNeely. [R.C1940.] On November 27, 1970, McNeely mailed Konzen the results of the physical examinations of plant employees, of which Bill Johnson was one. [R.C2059-60.]

By January 6, 1971, Dr. Konzen had directed that the chest x-rays of all plant employees be sent to a consultant. [R.C1941.] By March 29, 1971, Konzen had himself reviewed the x-ray films and the consultant's readings. [R.C1945.]

On April 7, 1971, Konzen met with W. W. Boeschenstein, president of OCF, to discuss the "Bloomington asbestos exposure." [R.C1947-48.] On April 8, 1971, Konzen was in Bloomington to review the "procedure for further medical evaluation of individuals suspected of having asbestosis." [R.C2053.] Bill Johnson was one of those individuals. [R.C2057.]

Bill Johnson died November 29, 1987. Plaintiff filed suit on September 19, 1989, alleging that OCF intentionally caused the death of her husband.

On October 14, 1991, Plaintiff served a request under Illinois Supreme Court Rule 237(b) that OCF produce Dr. Konzen and W. W. Boeschenstein at trial. [R.C1664.][1] On

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[1] As of October 14, 1991, there had never been a trial of any plaintiff's claim that OCF had intentionally caused injury to, or the death of, a Bloomington plant worker. On March 19, 1991, Judge William Caisley (the judge who tried the instant case) commenced a jury trial in the Circuit Court of McLean County (case no. 85 L 368) where Betty Vance was the plaintiff and OCF was the defendant. Mrs. Vance had alleged, as Plaintiff did in the instant case, that her husband was employed at the Bloomington plant and died from lung cancer caused by the intentional misconduct of OCF. During opening statement in *Vance*, counsel for OCF told Judge Caisley and the jury that Dr. Konzen would appear as a witness at trial. "[OCF hired] George McNeely to do physical examinations of everyone to get an idea of what the base line physical [health] of each of the workers

October 30, OCF filed a motion to quash Plaintiff's Rule 237(b) notice. [R.C1917.] Plaintiff filed a response [R.C1927] to which she attached copies of a number of OCF internal documents demonstrating the substantial personal involvement that Konzen and Boeschenstein had in identifying, discussing and reacting, or failing to react, to the hazards created by the airborne asbestos at the Bloomington plant during the period 1970-74, as well as OCF's evaluation of the amount of asbestos disease among the workers, including Bill Johnson. Following a hearing on November 1, 1991, the trial court denied OCF's motion to quash.[2]

On November 4, OCF filed a petition with the Illinois Supreme Court requesting, among other things, a stay of

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was, and they told him, and Mr. Konzen will tell you that he told him to let the workers know if they had a problem." [Appendix to this Opposition at 18a.] The *Vance* case was settled before Dr. Konzen testified.

[2] At page 6 of its petition to this court, OCF represents that "[i]t was undisputed that the individuals lacked minimum contacts with Illinois." Although neither the language of Rule 237(b), nor the Appellate Court's construction of the rule, limits the application of the rule to only those officers, directors or employees who had minimum contacts with Illinois, it certainly is *not* "undisputed that [Konzen and Boeschenstein] lacked minimum contacts with Illinois." Instead, it is undisputed that they did have more than minimum contacts with Illinois regarding the matters out of which this suit arose. For example, Konzen made seven different trips to the Bloomington plant while Bill Johnson worked there. A corporation can act only through its directors, officers and employees. Konzen and Boeschenstein were two of the officers through which OCF performed the intentional misconduct which was the basis of Opal Johnson's claim against OCF.

the trial until that court ruled upon OCF's petition for mandamus. The Illinois Supreme Court denied the petition for stay on November 5.

The case was called for trial on November 7, 1991. OCF announced that it would not be producing Konzen and Boeschenstein. [Volume IX of Record at 9.] OCF asked the court to preclude Plaintiff from calling Konzen or Boeschenstein to the stand in the presence of the jury and to order Plaintiff to move for whatever sanctions Plaintiff felt were appropriate before jury selection commenced. [Vol. IX at 33-35.] The court granted OCF's motion. [Vol IX at 35.]

Plaintiff requested, pursuant to Illinois Supreme Court Rule 219(c), that the trial court sanction OCF for its failure to produce Konzen and Boeschenstein by striking OCF's pleadings and entering judgment by default, leaving the amount of damages as the only issue for the jury to determine. [Vol. IX at 36-37.] Plaintiff supported her motion with the narrative statement by her counsel of what the testimony of Konzen and Boeschenstein would have been had OCF not refused to produce them. [Vol. IX at 37-42.] OCF denied that Plaintiff had accurately stated what Dr. Konzen's testimony would have been had OCF not refused to produce him. [Vol. IX at 43.] Plaintiff then called Konzen and Boeschenstein to the witness stand for the limited purpose of showing "by question and answer what their testimony would be if they were produced and testified before the Jury so that [Plaintiff] can eliminate any controversy that exists between what [Plaintiff says] in narrative form their testimony would be . . . and what their testimony would be." [Vol. IX at 48.] OCF refused to

produce Konzen and Boeschenstein for even that limited purpose. [Vol. IX at 49.]

There was no evidence that OCF had directed Konzen or Boeschenstein to appear. The trial court found that OCF had not directed Konzen or Boeschenstein to appear. The court reasoned that given the serious consequences to Konzen and Boeschenstein of their refusal to appear if they had been directed to do so, it was far more probable that OCF had directed Konzen and Boeschenstein not to appear. [Vol. IX at 49-52.] The court concluded that OCF had wilfully violated Rule 237(b). [Vol. IX at 52.] The following reflects the court's analysis and ruling on Plaintiff's motion for sanctions:

> "[T]he failure to produce witnesses pursuant to Supreme Court Rule 237 is even more crucial to the operation of the court system and central to its function to administer justice and to seek the truth than [the violation of] Supreme Court Rules relative to discovery; and that the action of the defendant in failing to comply with Supreme Court Rule 237 is wilful and constitutes an aggravated violation of the Supreme Court Rules and that the sanction of striking the defendant's pleadings and entering a default order against the defendant, Owens-Corning Fiberglas Corporation is in proportion to the grievousness of its violations in failing to produce Doctor Konzen and Mr. Boeschenstein." [R.C15.]

OCF moved for a recess. The court advised OCF that it would vacate the default order if OCF were to reconsider and produce the witnesses. The court then recessed for lunch. After lunch OCF announced that it would

continue in its refusal to produce Konzen and Boeschenstein, and thus not avail itself of the opportunity to avoid the sanctions. [Vol. IX at 54-56; R.C16.]

OCF's counsel also described to the trial court OCF's motivation in failing to have its employees present. "[T]he only reason Dr. Konzen and . . . Mr. Boeschenstein are not here is because we don't feel that we can have them coming over here and, constantly in the many plant worker cases that Mr. Walker has, and we decided to make an issue of it to the extent that maybe we can get an Appellate decision. We'll certainly abide by what the Appellate Courts decide once the issue is truly litigated to a conclusion at, at that level." [Vol. X at 19.][3]

The jury returned a verdict for Plaintiff [R.C2101] upon which the court entered judgment. [R.C2121.] OCF's post-trial motion [R.C2198] was denied on January 28, 1992. [R.C2252.] OCF filed its notice of appeal on February 26, 1992. [R.C2268.]

OCF appealed to the appellate court for the Fourth District of the State of Illinois. Consistent with briefing requirements at the appellate level, OCF listed those "statutes involved" in its Appellant's Brief. The Fourteenth Amendment was not listed. [Opposition Appendix at 6a-7a.] In its Reply Brief before the appellate court, OCF again cited statutes as authorities in support of its

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[3] OCF has not abided by the Appellate Court's decision. The Appellate Court's decision was filed August 27, 1992. Three of the other instances of wilful Rule 237(b) violations to which OCF admits at page 15, fn. 7, of its petition (*Smith, Gerzsenye* and *Costa*), were committed after August 27, 1992.

position. No citation was made to the Fourteenth Amendment. [Opposition Appendix at 9a.] Neither in its initial Appellant's Brief, nor its Reply Brief, did OCF assert that the trial court's ruling as to OCF was an attempt to require OCF to engage in "state action."

After the appellate court affirmed the judgment against OCF, OCF filed its Petition for Leave to Appeal with the Illinois Supreme Court. As in the appellate court, in the "Points and Authorities" at the beginning of OCF's petition, no citation to the Fourteenth Amendment occurred. [Opposition Appendix at 13a-16a.]

REASONS FOR DENYING THE WRIT

I.

OCF HAS FAILED TO PRESERVE FOR REVIEW ANY ISSUES AS TO THE FOURTEENTH AMENDMENT OR STATE ACTION.

OCF's petition to this Court cites, and quotes, the Fourteenth Amendment to the United States Constitution as the "Constitutional Provision and Rule Involved". Illinois Supreme Court Rule 341(e)(1) mandated that OCF's Appellant's Brief contain "a summary statement, entitled 'Points and Authorities,' of the points argued and the authorities cited in the Argument. This shall consist of the headings of the points and subpoints as in the Argument, with the citation under each heading of the authorities relied upon or distinguished, and a reference to the page of the brief on which each heading and each authority appear." OCF never cited the Fourteenth Amendment in its "Points and Authorities" [Opposition Appendix at

1A-5A] section of its Appellant's Brief in direct contravention of the requirement of Illinois Supreme Court Rule 341(e)(1).

OCF did not cite the Fourteenth Amendment in that section of its Appellant's Brief entitled "Statutes Involved." [Opposition Appendix at 6a-7a.] The "Table of Points and Authorities" of OCF's Reply Brief and the "Points and Authorities" section of its Petition for Leave to Appeal to the Illinois Supreme Court were silent as well, containing no citation or quotation of the Fourteenth Amendment. [Opposition Appendix at 8a-16a.]

The failure by OCF to provide any citation to, or quotation of, the Fourteenth Amendment as authority in support of its position to the appellate or supreme courts of Illinois reflects that OCF did not adequately present to the state courts any federal question regarding the Fourteenth Amendment. OCF has failed to preserve the issue of the Fourteenth Amendment for this Court's review.

OCF has also failed to preserve for this Court's review any issue as to whether the trial court's ruling was state action subject to the Fourteenth Amendment. OCF spends a substantial portion of its petition to this Court, pages 7-13, alleging that the application to OCF of the Illinois trial court's ruling would require OCF to engage in "state action." Just as OCF failed to cite or quote the Fourteenth Amendment in support of its argument to the appellate court, OCF also failed to ever assert to the Illinois appellate court the issue of state action.

Not surprisingly, the appellate court never discussed whether the trial court's application of Illinois Supreme

Court Rule 237(b) would force OCF to engage in state action, since that issue was not raised by OCF in its appellate court briefs. There can be no "review" to this court of an alleged federal question that was not raised by OCF in the Illinois appellate court, nor decided by that court. *Durley v. Mayo*, 351 U.S. 277, 285 (1956).

II.

OCF HAS FAILED TO DEMONSTRATE A DENIAL OF A RIGHT GRANTED TO IT BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

It is impossible to determine from a reading (or a rereading) of OCF's petition whose Fourteenth Amendment rights it claims have been violated. Plaintiff submits that OCF intentionally avoided providing the answer to this question, because to do so would demonstrate the shortcoming of OCF's petition.

"Due process" has been construed to include "notice." Without question OCF had notice of the suit (it was served with summons) and notice of Plaintiff's Rule 237(b) request (OCF admitted to receiving the request). OCF was not denied "notice."

Due process has been construed to include "an opportunity to be heard." OCF filed an answer to the suit and a motion to quash Plaintiff's Rule 237(b) request. OCF was granted a hearing on its motion to quash at which time it stated all that it wished to state in support of its motion. OCF was not denied an opportunity to be heard.

"Due process" has been construed to include the right not to be forced to defend a case in a state in which one has not had at least minimal contacts. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). OCF clearly had and still has more than minimal contacts with Illinois. This case arose from OCF's operation of an asbestos plant in Illinois where decedent was employed for seven years during OCF's ownership. OCF was and still is physically present in Illinois.

No part of the instant case has resulted in OCF being denied any rights granted to it by the due process clause of the Fourteenth Amendment.

III.

OCF HAS FAILED TO DEMONSTRATE THAT EITHER KONZEN OR BOESCHENSTEIN HAS BEEN DEPRIVED OF HIS LIFE, LIBERTY OR PROPERTY.

The Fourteenth Amendment provides that "nor shall any State deprive any person of life, liberty or property without due process of law." No one, not Plaintiff, not the Illinois court system, not even OCF itself, has done anything to deprive Konzen or Boeschenstein of his life, liberty or property. They were not served with process. They were not threatened with imprisonment, a fine or a judgment. OCF neither fired them nor threatened to fire them. This record is silent as to whether OCF even actually *asked* either of them to go to Illinois.

Even if Konzen or Boeschenstein had been directed to, and did, appear in Illinois, the time and effort involved is not the type of deprivation of liberty or

property to which the due process clause of the Fourteenth Amendment applies.

In *Hurtado v. United States*, 410 U.S. 578, 588-89, 93 S.Ct. 1157, 1164 (1973), this Court held that even the pretrial incarceration of a witness is not a "taking" under the Fifth Amendment because "the Fifth Amendment does not require that the Government pay for the performance of a public duty it is already owed. * * * It is beyond dispute that there is in fact a public obligation to provide evidence . . . and that this obligation persists no matter how financially burdensome it may be."

If the "detention of a material witness . . . is simply not a 'taking' under the Fifth Amendment" (*Hurtado*, 410 U.S. at 589, 93 S.Ct. at 1164), the time and effort it would have taken Konzen and Boeschenstein, in the course of their duties as an OCF officer and director, to appear in Illinois is not a deprivation of liberty or property under the Fourteenth Amendment. See *United States v. Friedman*, 532 F.2d 928, 935 (3d Cir. 1976); *In re Grand Jury No. 76-3*, 555 F.2d 1306, 1308-09 (5th Cir. 1977); *United States v. Doe*, 457 F.2d 895, 897-98 (2d Cir. 1972).

IV.

OCF'S REFUSAL TO COMPLY WITH ILLINOIS SUPREME COURT RULE 237(b) HAS NOT LED TO "RAMPANT LITIGATION ABUSE."

In part II of its petition, OCF charges that application of Illinois Supreme Court Rule 237(b) to OCF has led to "rampant litigation abuse."

OCF alleges that the issue of state court rules requiring employers to produce their employees as witnesses "frequently recurs at the trial-court level." The "frequently recurring" issue occurs only due to OCF's continuing noncompliance.

According to OCF there are a total of six other cases where the issue has arisen. When the national counsel selected by OCF to try this case was before the trial court, he admitted that:

> "[T]he only reason Dr. Konzen and Dr., and Mr. Boeschenstein are not here is because we don't feel that we can have them coming over here and, constantly in the many plant worker cases that Mr. Walker has, and we decided to make an issue of it to the extent that maybe we can get an Appellate decision. We'll certainly abide by what the Appellate Courts decide once the issue is truly litigated to a conclusion at, at that level." [Vol. X at 19.]

Once the Illinois appellate court issued its decision, what was OCF's response? The week after the appellate court filed its decision in this case, OCF refused to produce Konzen in *Costa v. OCF*, No. 88 L 239 (Ill. Cir. Ct., 10th Judicial Cir., Peoria County) [Petition at 15, fn. 7].

The Illinois Supreme Court denied OCF's petition for leave to appeal on December 2, 1992. In January, 1993, OCF again refused to produce any officer or director in two of the cases listed in OCF's Petition at 15, fn. 7 – *Smith v. OCF*, and *Gerzsenye v. OCF*. If OCF, in good faith (as opposed to trial strategy due to a concern over the admissions its employees would make in front of a judge

and jury) wanted to pursue the issue of the validity of Illinois Supreme Court Rule 237(b), OCF could have continued its review in this case and, in the interim, produced the agents requested by opposing parties.

The additional sanctions that have been entered against OCF, due to its refusals to produce in other cases, is a risk that Owens-Corning has chosen to take. OCF refers to the *Pickering* decision. [OCF Petition at 15.] Contrary to OCF's suggestion that *Pickering* has "cost" OCF $10.5 million, OCF has yet to pay the judgment from which it has appealed.

In *Pickering*, OCF attempted to interest the Seventh Circuit Court of Appeals in this dispute. As Judge Easterbrook stated, in authoring the opinion which denied OCF's request for an injunction against the Illinois trial court:

> "That there are costs of being right is an acceptable incident of an orderly legal system. That there are costs of being wrong – that Owens-Corning may pay damages if it stakes its all on its legal position and loses – is positively desirable, and a federal court should not interfere . . . Self-control in advancing legal positions is a prime objective of any system of adjudication." *Owens-Corning Fiberglas Corp. v. Moran*, 634 F.2d 634, 636 (7th Cir. 1992).

OCF alleges that, if it produces any officer, director, or employee, OCF's agents "virtually would become full-time witnesses. . . . " [OCF's petition at 15.] Contrary to the implication in OCF's petition, Dr. Konzen and Boeschenstein have never testified before a judge or jury

in an Illinois courtroom. To Plaintiff's knowledge, neither Konzen or Boeschenstein have ever set foot in any courtroom to discuss OCF's conduct regarding asbestos.

Although Dr. Konzen repeatedly traveled to Bloomington at the behest of OCF when it served the corporate purposes of OCF, on each occasion when an Illinois plaintiff has requested his presence in open court (where a trial judge presides, ready to rule instantly on any OCF objections to questions posed to the witness concerning earlier activities and writings) OCF has uniformly refused to produce Konzen. The same is true of Boeschenstein.

Finally, OCF believes it can state the "real agenda" behind a plaintiff's use of Rule 237(b) directed to OCF. OCF states Opal Johnson's desire was to "harass or pressure" OCF, rather than obtain testimony. [OCF Petition at 15, fn. 8.] In support of this contention, OCF states that since Plaintiff did not depose Konzen or Boeschenstein before they took the witness stand, Plaintiff could not have believed the individuals had important information.

At the trial level, Plaintiff showed the materiality of Konzen and Boeschenstein's knowledge to the issues in this case by supplying internal documents of OCF authored, or received, by those individuals. The same Plaintiff's counsel who represents Opal Johnson first deposed Jon Konzen in an asbestos case on December 3 and 4, 1980 (eleven years before the trial in this case). OCF's suggestion that Plaintiff's counsel had no idea what Konzen would say is wrong. Not only did Plaintiff's counsel have the transcript of the discovery deposition taken in 1980 of Konzen, Plaintiff's counsel also had

copies of transcripts taken in other cases, by other plaintiffs, of Konzen and Boeschenstein.

Of course, any attempt by Opal Johnson to add to that testimony was vigorously opposed by OCF. On May 12, 1991, (six months before trial) OCF responded to Plaintiff's First Request for Discovery by admitting OCF possessed a transcript of a deposition Konzen had given on May 12, 1990. [R.C1214.] Plaintiff requested a copy of that transcript on June 19. On July 7, when OCF had refused to supply the transcript, Plaintiff moved to compel OCF to produce a copy. [R.C1327.] OCF filed a written opposition, which the trial court overruled. The court ordered OCF, on August 21, 1991, to provide Plaintiff with a copy of the transcript by September 15. [R.C10.] OCF moved to reconsider. The trial court denied OCF's motion on October 18, 1991, directing OCF to produce the transcript by October 31, 1991. [R.C1855.]

Only on November 1, after Plaintiff informed the trial court that OCF still had not produced the transcript (and after the court ordered OCF to produce a copy instanter) did OCF finally pull from its files a copy of the Konzen deposition transcript. [R.C1993.] OCF's conduct in requiring three orders from the trial court before OCF would produce a transcript diminishes the credibility of OCF's assertion that any plaintiff could easily take a deposition where Konzen would answer all relevant questions without interference from a phalanx of OCF attorneys.

OCF's decision to allow itself to be repeatedly sanctioned, even after appellate review, reflects the "real agenda" behind OCF's trial strategy – refusal to produce any employee whose testimony would be harmful to OCF

in any forum where a trial judge can swiftly rule on attempts by OCF to prevent admissions from those employees from becoming part of the public record.

CONCLUSION

Respondent requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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GENERAL NO. 4-92-0175

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

OPAL JOHNSON, Individually and as Special Administrator for the Estate of WILLIAM JOHNSON, Deceased

Plaintiff/Appellee,

v.

OWENS-CORNING FIBERGLAS CORPORATION, et al.,

Defendant/Appellant.

Appeal From The Circuit Court of The Eleventh Judicial Circuit of McLean County, Illinois Circuit Court No. 89 L 187
The Honorable William T. Caisley, Judge Presiding

BRIEF OF DEFENDANT-APPELLANT OWENS-CORNING FIBERGLAS CORPORATION

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STATUTES INVOLVED

I. *Supreme Court Rule 237(b)* states as follows:

> **(b) Notice of Parties, et al.** The appearance at the trial of a party or a person who at the time of trial is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the trial of documents or tangible things. If the party or person is a nonresident of the county, the court may order any terms and conditions in connection with his appearance at the trial that are just, including payment of his reasonable expenses. Upon a failure to comply with the notice, the court may enter any order that is just, including any order provided for in Rule 219(c) that may be appropriate.

Ill. Ann. Stat. ch. 110A, para. 237(b) (Smith-Hurd 1985).

II. *Supreme Court Rule 219(c)* states as follows:

> **(c) Failure to Comply with Order or Rules.** If a party, or any person at the instance of or in collusion with a party, unreasonably refuses to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just, including, among others, the following:
>
> (i) that further proceedings be stayed until the order or rule is complied with;

(ii) that the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;

(iii) that he be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;

(iv) that a witness be barred from testifying concerning that issue;

(v) that, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that his action be dismissed with or without prejudice; or

(vi) that any portion of his pleading relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue.

In lieu of or in addition to the foregoing, the court may order that the offending party or his attorney pay the reasonable expenses, including attorney's fees incurred by any party as a result of the misconduct, and by contempt proceedings compel obedience by any party or person to any subpoena issued or order entered under the rules. Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the motion of any party, any order imposing monetary sanctions, including such orders as may be

entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.

Ill. Ann. Stat. Ch. 110A, para. 219(c) (Smith-Hurd Supp. 1991).

III. *Article I, Section 2 of the Illinois Constitution States as follows:*

Due Process and Equal Protection

No person shall be deprived of life, liberty or property without due process of law nor denied the equal protection of the laws.

GENERAL NO. 4-92-0175

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL CIRCUIT

OPAL JOHNSON, Individually and as Special Administrator for the Estate of WILLIAM JOHNSON, Deceased

Plaintiff/Appellee

v.

OWENS-CORNING FIBERGLAS CORPORATION, et al.,

Defendant/Appellant.

Appeal From the Circuit Court of The Eleventh Judicial Court of McLean County, Illinois
Circuit Court No. 89 L 187
The Honorable William T. Caisley, Judge Presiding

REPLY BRIEF OF DEFENDANT-APPELLANT OWENS-CORNING FIBERGLAS CORPORATION

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IN THE
SUPREME COURT OF ILLINOIS

OPAL JOHNSON, Individually and as Special Administrator for the Estate of WILLIAM JOHNSON, Deceased,

Plaintiff-Respondent,

v.

OWENS-CORNING FIBERGLAS CORPORATION,

Defendant-Petitioner,

and

BRAKEGATE, LTD., CHARTER CONSOLIDATED, PLC, CHARTER CONSOLIDATED SERVICES, LTD., CENTRAL MINING FINANCE, LTD., THE CONSOLIDATED MINES SELECTION COMPANY, LTD., BRITISH SOUTH AFRICA COMPANY, CAPE ASBESTOS FIBRES, LTD., EGNEP (Pty) LIMITED, GATKE CORPORATION, ABEX CORPORATION, H.K. PORTER COMPANY, INC., NORTH AMERICAN ASBESTOS CORPORATION,

Defendants.

PETITION FOR LEAVE TO APPEAL

From the Appellate Court of Illinois, Fourth District, No. 4-92-0175, There Heard on Appeal from the

Circuit Court, County of McLean, Illinois, No. 89L187,
Honorable William T. Caisley, Judge Presiding

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

McLEAN COUNTY, ILLINOIS

BETTY VANCE, et al,	)	
Plaintiffs,	)	
	)	McLean County
vs.	)	Case No. 85 L 368
UNARCO INDUSTRIES, et al,	)	(Filed
	)	MAY 28 1992)
Defendants.	)	

OPENING STATEMENT OF DEFENDANT,
OWENS CORNING FIBERGLASS

REPORT OF PROCEEDINGS of the trial before the HONORABLE WILLIAM T. CAISLEY, and a Jury, on the 19th day of March, 1991.

APPEARANCES:

MR. JAMES WALKER,
MR. JAMES WYLDER,
ATTORNEYS AT LAW,
For the Plaintiffs.

MR. ROBERT MARTIER,
MR. EDGAR NEELY,
ATTORNEYS AT LAW,
For the Defendant, Owens Corning Fiberglass.

Kathy L. Fulks, CSR, CM
Official Court Reporter
520 Law & Justice Center
Bloomington, IL 61701
(309) 888-5251

MR. NEELY: I'm not a speaker without notes. Members of the Jury, my name is Edgar Neely, and Bob Martier and I represent Owens Corning Fiberglass.

* * *

Now, I want to shift the gears a little bit and tell you about Owens Corning Fiberglass.

* * *

They taught, they hired a man, as he said, George, George McNeely – no relation to me – my name's Neely, but no McNeely – George McNeely to do physical examinations of everyone to get an idea of what the base line physical held of each of the workers was, and they told him, and Mr. Konzen will tell you that he told him to let the workers know if they had a problem.